EXHIBIT A

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Re: ***United States v. Microsoft Corp.*****, Case No. 98-1232 (D.D.C.)**
State of New York, et al. v. Microsoft Corp.**, Case No. 98-1233 (D.D.C.)**

Dear Counsel:

We write on behalf of the Associated Press, Bloomberg News, Dow Jones & Co., The New York Times Company, Reuters America Inc., The San Jose Mercury News, The Seattle

Times, The Washington Post, ZDTV, L.L.C., and ZDNet in anticipation of the commencement of trial in the referenced actions on October 15.

As you know, the trial of this case will resolve issues of significant concern to the American people and has, therefore, been the subject of intense public interest since the inception of litigation last Spring. That interest will reach its zenith during the trial itself, a proceeding to which the press and public are afforded broad rights of access by the Constitution, the common law, and the Federal Rules of Civil Procedure. Accordingly, we write at this time to set forth, well in advance of trial, our clients' understanding of the scope of those rights in the context of this case. We know that all parties share the desire to avoid unnecessary motions practice and, in particular, to avoid the necessity of litigation over issues collateral to the trial on the merits. Therefore, and consistent with Local Rule 108(m), we respectfully request that, if any party does not share the understandings set forth below, they communicate their position to us no later than October 5.

First, we note that, pursuant to Pretrial Order No. 2 and the Amended Scheduling Order entered September 14, the plaintiffs are required to file with the Court the direct examinations of their trial witnesses and excerpts of deposition testimony to be offered at trial on or before October 9. The Pretrial Order further provides that defendants' direct examinations of their trial witnesses and excerpts of deposition testimony must be filed with the Court at least five days prior to the time it appears the plaintiffs' case-in-chief will be completed. The public's right of access to such trial testimony attaches from the time it is filed with the Court. *See, e.g., Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 161 (3d Cir. 1993); *FTC v. Standard Fin. Management Corp.*, 830 F.2d 404, 409 (1st Cir. 1987); *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1310 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179-81 (6th Cir. 1983). Accordingly, we anticipate that both the direct examinations and deposition excerpts referenced in Pretrial Order No. 2, as amended, will be made available to the press and public contemporaneously with their submission to the Court, commencing no later than October 9.

Second, during the pretrial phase of this litigation, a substantial number of documents filed with the Court, or otherwise produced in discovery, have been designated "Confidential" or "Highly Confidential" pursuant to the Stipulation and Protective Order entered May 27, 1998. If, as appears likely, at least some such documents will be offered in evidence at trial, the public's presumptive right of access will attach to them with special force. *See, e.g., Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 569, 580 n.17 (1980); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d at 1177; *see also* Fed. R. Civ. P. 43(a); Fed. R. Civ. P. 77(b). Accordingly, we anticipate that very few, if any, trial exhibits will properly be submitted under

seal, either in their entirety or in part. At a minimum, we would expect that, if any party seeks such extraordinary treatment of a trial exhibit, the Court will be asked to rule – at the time of its identification as a trial exhibit – whether any portion of such a document may properly be maintained under seal. In that event, we would further expect that the press and public will receive meaningful advance notice and that no party would object to a request by our clients to be heard on the question.

Third, although we fully expect that the entirety of the trial will be held in open court, we cannot discount the possibility that a party may seek to close the courtroom to the press and public during some portion of a witness' examination. Because any such request by a party in a case of this magnitude would be most extraordinary, *see, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), we trust that the press and public will be afforded meaningful advance notice if any party or witness seeks to close the courtroom and that no party would object to a request by our clients to be heard on the question.

We look forward to receiving your response to the matters addressed in this letter on or before October 5. Because trial is scheduled to commence shortly thereafter, we will interpret a lack of response by a party to signify its disagreement with our understandings of the requirements of applicable law. In that event, our clients will promptly move the Court for appropriate relief.

Yours sincerely,

LEVINE PIERSON SULLIVAN & KOCH, L.L.P.

By _____
Lee Levine
Jay Ward Brown

cc: Mark S. Popofsky, Esq.
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